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10 UNITED STATES DISTRICT COURT  
11 EASTERN DISTRICT CALIFORNIA  
12 FRESNO DIVISION

13 THE STATE OF MISSOURI, ex rel.,  
14 Chris Koster, Attorney General; THE  
15 STATE OF NEBRASKA, ex rel. Jon  
16 Bruning, Attorney General; THE STATE  
17 OF OKLAHOMA, ex rel. E. Scott Pruitt,  
18 Attorney General; THE STATE OF  
19 ALABAMA, ex rel. Luther Strange,  
20 Attorney General; THE  
21 COMMONWEALTH OF KENTUCKY, ex  
22 rel. Jack Conway, Attorney General; and  
23 TERRY E. BRANSTAD, Governor of the  
24 State of Iowa,

25 Plaintiffs,

26 v.

27 KAMALA D. HARRIS, solely in her official  
capacity as Attorney General of California;  
KAREN ROSS, solely in her official  
capacity as Secretary of the California  
Department of Food and Agriculture,

Defendants.

Case No. 2:14-cv-00341-KJM-KJN

**FIRST AMENDED  
COMPLAINT TO DECLARE  
INVALID AND ENJOIN  
ENFORCEMENT OF AB1437  
AND 3 CA ADC § 1350(d)(1)  
FOR VIOLATING THE  
COMMERCE AND  
SUPREMACY CLAUSES OF  
THE UNITED STATES  
CONSTITUTION**

The States of Missouri, Nebraska, Oklahoma, and Alabama, and the Commonwealth of Kentucky, through their relators, and Iowa Governor Terry Branstad state the following for their First Amended Complaint to Declare Invalid and Enjoin Enforcement of AB1437 (California Health and Safety Code §§25995-97) and 3 CA ADC § 1350(d)(1) for Violating the Commerce and Supremacy Clauses of the United States Constitution:

## JURISDICTION AND VENUE

1. This case presents a federal question arising under the Commerce and Supremacy Clauses of the Constitution of the United States, 42 U.S.C. §1983, and 42 U.S.C. §1988. The Court has subject-matter jurisdiction under 28 U.S.C. §§1331 and 1343(a)(3).

2. Venue is proper in this Court under 28 U.S.C. §1391(b)(1) because both Defendants maintain an office within the Eastern District of California.

## NATURE OF THE CASE

3. In 2008, California voters approved Proposition 2 (“Prop 2”), attached as Ex. A, a ballot initiative that will prohibit California farmers from employing a number of agricultural production methods in widespread use throughout the United States. Starting in 2015, for example, California egg producers will no longer be allowed to house that state’s 20 million egg-laying hens in any enclosure it provides sufficient room for each hen to stand up, lie down, turn around freely, and fully extend their limbs. Almost all hens on commercial egg farms in California are currently kept in conventional cage-systems that house between 4 and 7 birds per cage and provide about 67 square inches of space per bird. Prop 2 effectively bans the use of these industry-standard cage-systems.

1           4.     Although Prop 2 does not specify what size enclosures will satisfy  
2 its new behavior-based standards, animal behavior experts have estimated  
3 anywhere from 87.3 square inches to 403 square inches per hen, depending  
4 on how the statutory language is interpreted. JOY MENCH ET AL., FINAL  
5 REPORT - CDFA AGREEMENT 09-0854, DETERMINATION OF SPACE USE BY  
6 LAYING HENS at 5, 7 (2012), attached as Ex. B.

7           5.     Even before the initiative passed, California farmers, economists,  
8 and legislators became concerned that Prop 2 would put their state's egg  
9 producers at a competitive disadvantage by increasing the cost of egg  
10 production *within* California. DANIEL A. SUMNER, ET AL., UNIVERSITY OF  
11 CALIFORNIA AGRICULTURAL ISSUES CENTER, ECONOMIC EFFECTS OF  
12 PROPOSED RESTRICTIONS ON EGG-LAYING HEN HOUSING IN CALIFORNIA at iii  
13 (2008), attached as Ex. C. To "level the playing field" and protect their own  
14 farmers from Prop 2's economic consequences, in 2010 the California  
15 Legislature passed AB1437 (attached as Ex. D), which requires egg farmers  
16 *in other states* to comply with behavior-based enclosure standards identical to  
17 those in Prop 2 if they want to continue selling their eggs in California.

18           6.     Egg producers in Missouri, Nebraska, Oklahoma, Alabama,  
19 Kentucky, and Iowa face a difficult choice regarding AB1437. Either they can  
20 incur massive capital improvement costs to build larger habitats for some or  
21 all of their egg-laying hens, or they can walk away from the largest egg  
22 market in the country. For example, Missouri farmers—who export one third  
23 of their eggs to California each year—must now decide whether to invest over  
24 \$120 million in new hen houses or stop selling in California. The first option  
25 will raise the cost of eggs *in Missouri* and make them too expensive to export  
26 to any state other than California. The second option will flood Missouri's  
27 own markets with a half-billion surplus eggs that would otherwise have been

1 exported to California, causing Missouri prices to fall and potentially forcing  
2 some Missouri farmers out of business.

3 7. By conditioning the flow of goods across its state lines on the  
4 method of their production, California is attempting to regulate agricultural  
5 practices beyond its own borders. Worse, the people most directly affected by  
6 California's extraterritorial regulation—farmers in our states who must  
7 either comply with AB1437 or lose access to the largest market in the United  
8 States—have no representatives in California's Legislature and no voice in  
9 determining California's agricultural policy.

10 8. AB1437's extraterritorial reach, its undue burden on interstate  
11 commerce, and its clear purpose to protect California farmers from out-of-  
12 state competition violate the Commerce Clause of the United States  
13 Constitution.

## 14 15 **THE PARTIES**

### 16 17 ***Plaintiff State of Missouri***

18 9. Missouri is a sovereign state, whose citizens enjoy all the rights,  
19 privileges, and immunities inherent in our federal system of government as  
20 guaranteed in the United States Constitution.

21 10. Missouri has standing to bring this case as *parens patriae*  
22 because its has quasi-sovereign interests in protecting its citizens' economic  
23 health and constitutional rights as well as preserving its own rightful status  
24 within the federal system.

25 11. Missouri farmers produced nearly two billion eggs in 2012 and  
26 generated approximately \$171 million in revenue for the state. See USDA  
27 NATIONAL AGRICULTURAL STATISTICS SERVICE, POULTRY - PRODUCTION AND  
28 VALUE 2012 SUMMARY at 12 (April 2013), attached as Ex. O.

1           12.    Almost one third of those eggs are sold in California. DON BELL  
2 ET AL., UNIVERSITY OF CALIFORNIA, EGG ECONOMICS UPDATE #338 APPENDIX  
3 at 5, attached as Ex. E.

4           13.    Missouri's economy and status within the federal system will be  
5 irreparably injured if the California Legislature—who were not elected by,  
6 and are not answerable to, the people of Missouri—is allowed to regulate and  
7 increase the cost of egg production in Missouri.

8           14.    As the duly elected, qualified, and acting Attorney General of  
9 Missouri, relator Chris Koster is authorized under Mo. Rev. Stat. § 27.060 to  
10 institute, in the name and on behalf of the State, all civil proceedings at law  
11 or in equity necessary to protect the rights and interests of the State of  
12 Missouri.

13           15.    This court can redress that injury by declaring AB1437 invalid  
14 and permanently enjoining its enforcement.

15  
16           ***Plaintiff State of Nebraska***

17           16.    Nebraska is a sovereign state, whose citizens enjoy all the rights,  
18 privileges, and immunities inherent in our federal system of government as  
19 guaranteed in the United States Constitution.

20           17.    Nebraska has standing to bring this case as *parens patriae*  
21 because it has quasi-sovereign interests in protecting its citizens' economic  
22 health and constitutional rights as well as preserving its own rightful status  
23 within the federal system.

24           18.    The State of Nebraska is one of the top ten largest egg producers  
25 in the United States, with production totaling 2.723 million eggs in 2012. See  
26 Ex. O at 12.

27           19.    Nebraska's economy and status within the federal system will be  
28 irreparably injured if the California Legislature—who were not elected by,

1 and are not answerable to, the people of Nebraska—is allowed to regulate  
2 and increase the cost of egg production in Nebraska.

3 20. This court can redress that injury by declaring AB1437 invalid  
4 and permanently enjoining its enforcement.

5  
6 ***Plaintiff State of Alabama***

7 21. Alabama is a sovereign state, whose citizens enjoy all the rights,  
8 privileges, and immunities inherent in our federal system of government as  
9 guaranteed in the United States Constitution.

10 22. Alabama has standing to bring this case as *parens patriae*  
11 because it has quasi-sovereign interests in protecting its citizens' economic  
12 health and constitutional rights as well as preserving its own rightful status  
13 within the federal system.

14 23. The State of Alabama is one of the top fifteen largest egg  
15 producers in the United States, with production totaling 2.139 million eggs in  
16 2012. See Ex. O at 12.

17 24. Alabama's economy and status within the federal system will be  
18 irreparably injured if the California Legislature—who were not elected by,  
19 and are not answerable to, the people of Alabama—is allowed to regulate and  
20 increase the cost of egg production in Alabama.

21 25. This court can redress that injury by declaring AB1437 invalid  
22 and permanently enjoining its enforcement.

23  
24 ***Plaintiff Commonwealth of Kentucky***

25 26. Kentucky is a sovereign commonwealth, whose citizens enjoy all  
26 the rights, privileges, and immunities inherent in our federal system of  
27 government as guaranteed in the United States Constitution.

1           27. Kentucky has standing to bring this case as *parens patriae*  
2 because it has quasi-sovereign interests in protecting its citizens' economic  
3 health and constitutional rights as well as preserving its own rightful status  
4 within the federal system.

5           28. Kentucky farmers produced approximately 1.037 billion eggs in  
6 2012 and generated approximately \$116 million in revenue for the state. See  
7 Ex. O at 12.

8           29. Kentucky's economy and status within the federal system will be  
9 irreparably injured if the California Legislature—who were not elected by,  
10 and are not answerable to, the people of Kentucky—is allowed to regulate  
11 and increase the cost of egg production in Kentucky.

12           30. This court can redress that injury by declaring AB1437 invalid  
13 and permanently enjoining its enforcement.  
14

15           ***Plaintiff State of Oklahoma***

16           31. Oklahoma is a sovereign state, whose citizens enjoy all the rights,  
17 privileges, and immunities inherent in our federal system of government as  
18 guaranteed in the United States Constitution.

19           32. Oklahoma has standing to bring this case as *parens patriae*  
20 because it has quasi-sovereign interests in protecting its citizens' economic  
21 health and constitutional rights as well as preserving its own rightful status  
22 within the federal system.

23           33. Oklahoma farmers produced more than 700 million eggs in 2012  
24 and generated approximately \$90 million in revenue for the state. Ex. O at  
25 12.

26           34. Oklahoma's economy and status within the federal system will be  
27 irreparably injured if the California Legislature—who were not elected by,

1 and are not answerable to, the people of Oklahoma—is allowed to regulate  
2 and increase the cost of egg production in Oklahoma.

3 35. This court can redress that injury by declaring AB1437 invalid  
4 and permanently enjoining its enforcement.  
5

6 ***Plaintiff Terry E. Branstad, Governor of Iowa***

7 36. Plaintiff Terry E. Branstad is the Governor of the State of Iowa.  
8 Governor Branstad has standing to join in this action as parens patriae,  
9 because Iowa has quasi-sovereign interests in regulating agricultural activity  
10 within its own borders and preserving Iowa’s rightful status within the  
11 federal system, as the United States Constitution guarantees.

12 37. Iowa is the number one state in egg production. Iowa farmers  
13 produce over 14.4 billion eggs per year. See Ex. O at 12.

14 38. Approximately 9.1% of those eggs—1.07 billion eggs per year—  
15 are sold in California. See Ex. E at 5.

16 39. Iowa farmers export more eggs to California than any other state.  
17 *Id.*

18 40. Thirty percent of the eggs imported into California are produced  
19 in Iowa. *Id.*

20 41. Iowa famers have more than 51 million egg-laying hens. Ninety  
21 percent of those hens are housed in the same conventional cage-systems  
22 currently in use in California and throughout the United States, and 10% are  
23 in enhanceable cages. The cost to Iowa farmers to retrofit existing housing or  
24 build new housing that complies with AB1437 would be substantial.

25 42. As the number one egg producing state, Governor Branstad  
26 believes the California’s AB1437, which seeks to regulate Iowa agricultural  
27 activity and has the effect of increasing the costs of egg production in Iowa,



1 will have a detrimental impact upon and cause irreparable harm to Iowa's  
2 economy.

3 43. This court can redress that injury by declaring AB1437 invalid  
4 and permanently enjoining its enforcement.

5  
6 ***Defendant Kamala D. Harris***

7 44. Defendant Kamala D. Harris is the Attorney General of the State  
8 of California and the chief law officer for the state. She has all the powers of  
9 a district attorney and has a duty to prosecute violations of law of which the  
10 superior courts of California shall have jurisdiction. Cal. Const. Art. V, § 13.  
11 She also has direct supervision over all district attorneys and sheriffs in  
12 California. *Id.*

13 45. It will be the duty of Attorney General Harris and the district  
14 attorneys she supervises to enforce the provisions of AB1437 when they  
15 become effective on January 1, 2015.

16 46. Attorney General Harris is sued solely in her official capacity and  
17 is subject to the jurisdiction of this court under *Ex parte Young*, 209 U.S. 123  
18 (1908).

19  
20 ***Defendant Karen Ross***

21 47. Defendant Karen Ross is the Secretary of the California  
22 Department of Food and Agriculture.

23 48. It will be the duty of Secretary Ross to enforce the provisions of 3  
24 CA ADC § 1350 when they become effective on January 1, 2015. See Cal  
25 Food. & Agric. Code § 407 ("The director may adopt such regulations as are  
26 reasonably necessary to carry out the provisions of this code which [she] is  
27 directed or authorized to administer or enforce.").

1           49. Secretary Ross is sued solely in her official capacity and is subject  
2 to the jurisdiction of this court under *Ex parte Young*, 209 U.S. 123 (1908).

3  
4                           **FACTUAL ALLEGATIONS**

5           **Egg producers across the country depend on the California egg**  
6           **market.**

7           50. California produces approximately 5 billion eggs per year and  
8 imports another 4 billion eggs from other states. Ex. E at 1.

9           51. Roughly 30% of the eggs imported to California—about 1.07  
10 billion eggs per year—come from Iowa. Ex. E at 5.

11           52. In total, California consumes more than 9% of the eggs produced  
12 by Iowa farmers each year.

13           53. Another 13% of California’s imports—almost 600 million—come  
14 from Missouri and comprise one third of all eggs produced in Missouri  
15 annually. *Id.*

16           54. Precise figures on the number of eggs imported into California  
17 from other states are scarce, but University of California Poultry Specialist  
18 Don Bell identifies Alabama, Nebraska, and Kentucky among the states  
19 whose eggs account for another 5.6% of total California imports. *Id.*

20  
21           **California voters restrict the production methods available to**  
22           **California egg farmers.**

23           55. In 2008, California voters passed Prop 2 “to prohibit the cruel  
24 confinement of farm animals” within California. Ex. A, § 2.

25           56. Prop 2 amended the California Health and Safety Code by adding  
26 five new sections numbered 25990 through 25994, which do not become  
27 effective until January 1, 2015. Ex. A, § 5. Section 25990(a)-(b) provides that  
28 “a person shall not tether or confine any covered animal [including egg-laying

1 hens], on a farm, for all or the majority of any day, in a manner that prevents  
2 such animal from: (a) Lying down, standing up, and fully extending his or her  
3 limbs; and (b) Turning around freely.” Ex. A, § 3. Section 25993 provides that  
4 a violation of §25990 shall constitute a misdemeanor punishable by up to a  
5 \$1,000 fine and 180 days in county jail. Ex. A, § 1.

6 57. Researchers at the University of California–Davis have estimated  
7 that California egg producers will have to invest upwards of \$385 million in  
8 capital improvements to bring their operations into compliance with Prop 2.  
9 HOY CARMAN, UC–DAVIS DEPARTMENT OF AGRICULTURAL AND RESOURCE  
10 ECONOMICS, ECONOMIC ASPECTS OF ALTERNATIVE CALIFORNIA EGG  
11 PRODUCTION SYSTEMS (“CARMAN PAPER”) at 22 (2012), attached as Ex. F.

12 58. In addition to increased capital costs, researchers estimate that  
13 the larger enclosures required by Prop 2 will increase the ongoing cost of  
14 producing eggs in California by at least 20%. Ex. C at 2.

15 59. Recognizing that it would take several years to implement, Prop  
16 2 gave California egg farmers a total of 2,249 days—from November 4, 2008  
17 until January 1, 2015—to figure out how to comply with the law and to  
18 replace their existing cage systems with acceptable alternatives. Ex. A, § 5.

19 60. The new capital costs and increased production costs associated  
20 with complying with Prop 2 would have placed California egg producers at a  
21 significant competitive disadvantage when compared to egg producers in  
22 Missouri and other states, and would likely have eliminated virtually all  
23 large scale egg-production in California within six years of Prop 2’s effective  
24 date. EX. C at 3-4.

25 61. Article II, section 10, subdivision (c) of the California  
26 Constitution prohibits the Legislature from amending or repealing Prop 2  
27 without voter approval.  
28

**The California Legislature passes AB1437 to protect  
California's egg producers from interstate competition.**

62. Faced with the negative impact Prop 2 would have on California's egg industry starting in 2015, the California Legislature in 2010 passed—and Governor Schwarzenegger signed—AB1437, which added three additional sections (§§25995 through 25997) to the California Health and Safety Code.

63. Section 25996 provides that, “Commencing January 1, 2015, a shelled egg may not be sold or contracted to sell for human consumption in California if it is the product of an egg-laying hen that was confined on a farm or place that is not in compliance with animal care standards set forth in [§ 25990].” Ex. D. Section 25997 provides that a violation of §25996 shall constitute a misdemeanor punishable by up to a \$1,000 fine and 180 days in county jail. Section 25996 was amended in 2013 to add “the seller knows or should have known” after the word “if.” S.B. No. 667 (2013), attached as Ex. G.

64. In addition to the minimum dimensions for hen enclosures based on bird behavior under §§ 25990(a)-(b), the California Department of Food and Agriculture (“CDFA”) has promulgated the following regulations establishing minimum dimensions based on floor space per bird—which may or may not be co-extensive with §§ 25990(a)-(b):

Commencing January 1, 2015, no egg handler or producer may sell or contract to sell a shelled egg for human consumption in California if it is the product of an egg-laying hen that was confined in an enclosure that fails to comply with the following standards. . . . An enclosure containing nine (9) or more egg-laying hens shall provide a minimum of 116 square inches of floor space per bird.

3 CA ADC § 1350(d)(1), attached as Ex. H.

1           65. If egg farmers may satisfy the behavioral requirements of  
2 AB1437 with the spatial requirements of 3 CA ADC § 1350(d)(1), the cost of  
3 producing eggs will increase by at least 12%. EX. F at 15. If they must switch  
4 to entirely cage-free production to satisfy AB1437, however, production costs  
5 will increase by more than 34. %. *Id.*

6           66. Whereas Prop 2 provided California egg farmers 2,249 days to  
7 come into compliance with its mandate, AB1437 gives Plaintiffs' egg farmers  
8 only 1,640 days—from July 6, 2010 until January 1, 2015—to do so. Put  
9 another way, California granted its own farmers an extra 609 days—*one and*  
10 *two-thirds years*—to bring their egg-production facilities into compliance with  
11 California law. Compare Ex. A, § 1 with Ex. D, § 5.

12  
13           **The purported public health purpose of AB1437 is pretextual.**

14           67. The stated purpose of AB 1437 is “to protect California  
15 consumers from the deleterious, health, safety, and welfare effects of the sale  
16 and consumption of eggs derived from egg-laying hens that are exposed to  
17 significant stress that may result in increased exposure to disease pathogens  
18 including salmonella.” Ex. D, §25995(e).

19           68. However, no scientific study conducted to date has found any  
20 correlation between cage size or stocking density and the incidence of  
21 Salmonella in egg-laying hens. VAN IMMERSEEL ET AL, IMPROVING THE  
22 SAFETY AND QUALITY OF EGGS AND EGG PRODUCTS, at 112 (2011), excerpt  
23 attached as Ex. I. Additionally, the most recent studies establish that there  
24 is no correlation between cage size or stocking density and stress levels in  
25 egg-laying hens. J.A. DOWNING AND W.L. BRYDEN, THE EFFECTS OF HOUSING  
26 LAYING HENS AS GROUPS IN CONVENTIONAL CAGES ON PLASMA AND EGG  
27 ALBUMEN CORTICOSTERONE CONCENTRATIONS, AUST. POULT. SCI. SYMP., at  
28 158-60 (2009), excerpt attached as Ex. J.

1           69. The legislative history of AB 1437 suggests that bill’s true  
2 purpose was not to protect public health but rather to protect California  
3 farmers from the market effects of Prop 2 by “leveling the playing field” for  
4 out-of-state egg producers. An analysis by the California Assembly  
5 Committee on Appropriations following its May 13, 2009 committee hearings  
6 on AB 1437 stated as follows:

7           “Rationale. With the passage of Proposition 2 in November  
8 2008, 63% of California's voters determined that it was a  
9 priority for the state to ensure the humane treatment of  
10 farm animals. However, the proposition only applies to in-  
11 state producers. *The intent of this legislation is to level the*  
12 *playing field so that in-state producers are not*  
13 *disadvantaged.* This bill would require that all eggs sold in  
14 California must be produced in a way that is compliant  
15 with the requirements of Proposition 2.”

16 Bill Analysis of the California Assembly Committee on Appropriations, May  
17 13, 2009 at 1 (emphasis added), attached as Ex. M.

18           70. After AB 1437 passed both the California Assembly and the  
19 California Senate, the California Health & Human Services Agency (CHHS),  
20 prepared an Enrolled Bill Report for the Governor. That report stated in  
21 pertinent part, “Supporters of Proposition 2 claimed that giving egg-laying  
22 hens more space may reduce this type of salmonellosis by reducing the  
23 intestinal infection with *Salmonella Enteritidis* via reducing the stress of  
24 intensive confinement. *Scientific evidence does not definitively support this*  
25 *conclusion.*” CHHS Enrolled Bill Report at 2 (emphasis added), attached as  
26 Ex. K. Summarizing the arguments pro and con concerning AB 1437 later in  
27 its report, CHHS further stated that one of the arguments against enactment

1 of the legislation is that there is “[n]o scientific evidence to support assertion  
2 of salmonella prevention.” *Id.* at 5.

3 71. Indeed, the California Department of Food and Agriculture  
4 (“CDFA”) concedes in the Legal Impact section of its own Enrolled Bill Report  
5 for AB 1437 that the bill’s purported public health rationale is likely  
6 untenable. If AB 1437 were to be challenged on Commerce Clause grounds,  
7 the CDFA warned, California

8 will have to establish that there is a public health  
9 justification for limiting the confinement of egg-laying hens  
10 as set forth in section 25990. This will prove difficult  
11 because, given the lack of specificity as to the confinement  
12 limitations, it will invariably be hard to ascribe any  
13 particular public health risk for failure to comply. . . . [W]e  
14 doubt that the federal judiciary will allow the state to rely  
15 exclusively upon the findings of the Legislature, such as  
16 they are, to establish a public health justification for  
17 section 25990.

18 CDFA Enrolled Bill Report at 5, attached as Ex. L.

19 72. Despite the absence of any scientific evidence to support the bill’s  
20 purported public health rationale, CDFA urged the governor to sign AB1437  
21 into law for purely economic reasons:

22 RECOMMENDATION AND SUPPORTING ARGUMENTS:  
23 SIGN. In November 2008, voters passed Proposition 2,  
24 requiring California farm animals, including egg-laying  
25 hens, have room to move freely. Approximately 35% of shell  
26 eggs consumed in California are imported from out of state.  
27 California is the fifth largest producer behind Iowa, Ohio,  
28 Indiana and Pennsylvania, in that order. *This will ensure*



1           *a level playing field for California’s shell egg producers by*  
2           *requiring out of state producers to comply with the state’s*  
3           *animal care standards.*

4 Ex. L at 1 (emphasis added).

5           73. Later in the same report, CDFA warned the governor that the  
6 danger in not signing the bill was competition, not contamination:

7           When Proposition 2 requirements are implemented in 2015,  
8           these producers will no longer be economically competitive  
9           with out-of-state producers. *Without a level playing field*  
10           *with out-of-state producers, companies in California will no*  
11           *longer be able to operate in this state and will either go out*  
12           *of business or be forced to relocate to another state.* This  
13           will result in a significant loss of jobs and reduction of tax  
14           revenue in California.

15 *Id.* at 3 (emphasis added).

16           74. In his signing statement, Governor Schwarzenegger makes no  
17 mention of AB1437’s purported public health rationale at all. The only  
18 purposes he cites for enacting the law is protecting California farmers from  
19 the market effects of Prop 2: “The voters’ overwhelming approval of  
20 Proposition 2 demonstrated their strong support for the humane treatment of  
21 egg producing hens in California. By ensuring that all eggs sold in California  
22 meet the requirements of Proposition 2, this bill is good for both California  
23 egg producers and animal welfare.” *Schwarzenegger signs bill requiring*  
24 *‘humane’ out-of-state eggs*, SACRAMENTO BEE CAPITOL ALERT (July 7, 2010)  
25 attached as Ex. N.  
26  
27



1       **The purported public health purpose of AB1437 is preempted**  
2       **by federal law in any event.**

3       75. Even assuming that AB1437 served a legitimate public health  
4 purpose *within* California by limiting the methods of egg production *outside*  
5 California, the statute would be expressly and implicitly preempted by the  
6 Federal Egg Products Inspection Act (“EPIA”), 21 U.S.C. § 1031 et seq.

7       76. Section 1031 of the EPIA, which is entitled “Congressional  
8 Statement of Findings,” makes clear that one of the express purposes of the  
9 EPIA is to protect human health in connection with the consumption of shell  
10 eggs:

11               It is essential, in the public interest, that the health  
12               and welfare of consumers be protected by the  
13               adoption of measures prescribed herein for assuring  
14               that eggs and egg products distributed to them and  
15               used in products consumed by them are wholesome,  
16               otherwise not adulterated, and properly labeled and  
17               packaged. . . . It is hereby found that ... regulation by  
18               the Secretary of Agriculture and the Secretary of  
19               Health and Human Services, ... as contemplated by  
20               this chapter, are appropriate ... to protect the health  
21               and welfare of consumers.

22       77. Section 1032 of EPIA, which is entitled “Congressional  
23 Declaration of Policy,” contains a Congressional mandate for national  
24 uniformity of standards for eggs:

25               It is hereby declared to be the policy of the Congress to  
26               provide for the inspection of certain egg products,  
27               restrictions upon the disposition of certain qualities of eggs,  
28               and uniformity of standards for eggs, and otherwise

1 regulate the processing and distribution of eggs and egg  
2 products as hereinafter prescribed *to prevent the movement*  
3 *or sale for human food, of eggs and egg products which are*  
4 *adulterated* or misbranded or otherwise in violation of this  
5 chapter.

6 (Emphasis added).

7 78. Under EPIA, Congress expressly preempted state laws intended  
8 to regulate the quality and condition of eggs: “For eggs which have moved or  
9 are moving in interstate or foreign commerce, no State or local jurisdiction  
10 may require the use of standards of quality, condition, weight, quantity, or  
11 grade which are in addition to or different from the official Federal  
12 standards....” 21 U.S.C. § 1052(b).

13 79. The terms “condition” and “quality” are not defined within the  
14 EPIA itself. Rather in Section 1043 of the EPIA, Congress delegated to the  
15 Secretary of Agriculture broad authority to promulgate “such rules and  
16 regulations as he deems necessary to carry out the purposes or provisions of  
17 this chapter.” USDA carried out those obligations in part by enacting a  
18 series of definitions for the purpose of the EPIA which are set forth in 7 CFR  
19 § 57.1. Those definitions provide in pertinent part that:

20 *Condition means any characteristic affecting a product’s*  
21 *merchantability including, but not being limited to, . . .*  
22 *cleanliness, soundness, wholesomeness, or fitness for human*  
23 *food of any product; or the processing, handling, or*  
24 *packaging which affects such product.*

25 . . .

26 *Quality means the inherent properties of any product which*  
27 *determine its relative degree of excellence.* (Emphasis  
28 added.)

1           80. If AB1437’s behavior-based standards for determining  
2 appropriate cage size were actually intended to reduce the risk of  
3 contamination from salmonella or other food-borne pathogens, such  
4 standards would be “in addition to or different from the official Federal  
5 standards” enumerated in EPIA, and would therefore be preempted by  
6 federal law.

7  
8           **AB1437 regulates conduct wholly and exclusively outside**  
9           **California and substantially burdens interstate commerce.**

10           81. The inescapable conclusion to be drawn from AB1437’s legislative  
11 history is that California’s *legislature* enacted AB1437 as a protectionist  
12 response to the competitive advantage California *voters* gave out-of-state egg  
13 producers when they passed Prop 2.

14           82. As Prop 2 would already have required larger hen enclosures  
15 *within* the State of California starting on January 1, 2015, the sole effect of  
16 AB1437 will be the extraterritorial regulation of egg production *outside* the  
17 State of California in places like Missouri, Nebraska, Alabama, Oklahoma,  
18 Kentucky, and Iowa.

19           83. AB1437 also imposes a substantial burden on interstate  
20 commerce by forcing Plaintiffs’ farmers either to forgo California’s markets  
21 altogether or accept significantly increased production costs just to comply  
22 with California law.

23           84. Those higher production costs will increase the price of eggs  
24 outside California as well as in. Because demand for eggs varies greatly  
25 throughout the year, egg producers in other states cannot simply maintain  
26 separate facilities for their California-bound eggs. In high-demand months,  
27 Plaintiffs’ farmers may not have enough eggs to meet California demand if  
28 only a fraction of their eggs are produced in compliance with AB1437. In low-

1 demand months, there may be insufficient California demand to export all  
2 compliant eggs, forcing Plaintiffs’ farmers to sell those eggs in their own  
3 states at higher prices than their competitors. Given those inefficiencies,  
4 Plaintiffs’ egg farmers must choose either to bring their entire operations into  
5 compliance with AB1437 so that they always have enough supply to meet  
6 California demand, or else simply leave the California marketplace.

7 85. Assuming they may comply with AB1437 by building new colony  
8 housing with 116 square inches per bird—as required by 3 CA ADC §  
9 1350(d)(1)—the necessary capital improvements will cost Plaintiffs’ farmers  
10 hundreds of millions of dollars. The cost to bring all henhouses into  
11 compliance in Missouri alone is estimated at approximately \$120 million.

12 86. Yet, because those costs would have been imposed on California  
13 producers under Prop 2 already, the sole purpose and economic effect of  
14 AB1437 is to increase capital improvement and production costs *outside*  
15 California—i.e., to “level the playing field.”

16 87. Even if farmers in Missouri would choose to forgo the California  
17 market instead of incurring increased production costs, AB1437 would still  
18 impose a substantial burden on interstate commerce. Without California  
19 consumers, Missouri farmers would produce a surplus of 540 million eggs per  
20 year. If one third of Missouri’s eggs suddenly had no buyer, supply would  
21 outpace demand by half a billion eggs, causing the price of eggs—as well as  
22 egg farmers’ margins—to fall throughout the Midwest and potentially forcing  
23 some Missouri producers out of business. The same goes for egg producers in  
24 Nebraska, Alabama, Oklahoma, Kentucky, and Iowa.

1        **Plaintiffs bring this suit to declare AB1437 and 3 CA ADC §**  
2        **1350(d)(1) unconstitutional and enjoin their enforcement**  
3        **presents a case or controversy ripe for review.**

4        88. Although AB1437 and 3 CA ADC § 1350(d)(1) do not become  
5 effective until 2015, the injury to Plaintiffs' farmers is "certainly impending."  
6 *See Pennsylvania v. West Virginia*, 262 U.S. 553, 593 (1923). Absent some  
7 additional action by Congress, the California Legislature, or this Court, any  
8 of our farmers who continue to export their eggs to California will face  
9 criminal sanctions beginning January 1, 2015 unless they take action now to  
10 come into compliance by the law's effective date.

11        89. Constructing new, compliant housing for tens of millions of hens  
12 in Nebraska, Alabama, Oklahoma, Kentucky, and Iowa cannot be  
13 accomplished overnight. If our farmers want to continue selling eggs in the  
14 California market on January 1, 2015, those eggs must be laid, inspected,  
15 packaged, and shipped before the end of 2014. In fact, those farmers need to  
16 begin making the necessary capital improvements to their farms *now* if they  
17 are to reach compliance with California law by January 2015. If AB1437 and  
18 3 CA ADC § 1350(d)(1) are eventually held to be unconstitutional, those  
19 capital improvements will turn out to have been a tremendous and  
20 unnecessary expense.

21        90. The uncertainty surrounding the constitutionality of AB1437 and  
22 3 CA ADC § 1350(d)(1) and their impending effective date less than one year  
23 away forces Plaintiffs' egg producers to literally bet the farm on the outcome  
24 of this law suit. They can proceed without making capital improvements in  
25 hopes that the law will be struck down, or they can begin the costly and  
26 labor-intensive process of changing their operations in case AB1437 and 3 CA  
27 ADC § 1350(d)(1) are upheld.

1           91.    Whichever path they follow, an incorrect choice spells doom for  
2 their businesses. Coming into compliance will necessarily increase  
3 productions costs; if the law is eventually struck down, the farmer will not be  
4 able to compete with egg producers still using cage-systems. And although  
5 maintaining the status quo costs nothing now, if the law is eventually upheld,  
6 the farmer who has not preemptively complied will face an interruption of  
7 business during the months it will take her to retool after the law is already  
8 in effect.

9           92.    A genuine case or controversy has arisen between the parties as  
10 to the constitutionality of AB1437 and 3 CA ADC § 1350(d)(1). Until that  
11 controversy is resolved, Plaintiffs' farmers do not know whether they need to  
12 renovate their henhouses in order to remain competitive after January 1,  
13 2015. If they choose to comply, and AB1437 and 3 CA ADC § 1350(d)(1) are  
14 struck down, our farmers will have priced themselves out of business. But if  
15 they wait and see, and the law is upheld, they will lose months of business  
16 trying to catch up after the law comes into effect.

17           93.    Article III of the U.S. Constitution does not require Plaintiffs to  
18 wait until AB1437 and 3 CA ADC § 1350(d)(1) become effective to seek a  
19 declaratory judgment as to their constitutionality because the damage to our  
20 economies will be irreparable at that point. This is precisely the kind of case  
21 for which declaratory relief is appropriate under 28 U.S.C. §2201.

1 **COUNT I**

2 **VIOLATION OF THE COMMERCE CLAUSE**

3 94. Plaintiffs incorporate all allegations in Paragraphs 1 through 93  
4 into Count I of this Complaint.

5 95. The Commerce Clause of the United States Constitution  
6 prohibits states from enacting legislation that protects its own citizens from  
7 competition from citizens of other states, that regulates conduct wholly  
8 outside of the state's borders, or that places an undue burden on interstate  
9 commerce.

10 96. AB1437 and 3 CA ADC § 1350(d)(1) violate the Commerce Clause  
11 because they are protectionist measures intended to benefit California egg  
12 producers at the expense of Plaintiffs' egg producers by eliminating the  
13 competitive advantage our farmers would enjoy once Prop 2 becomes  
14 effective.

15 97. AB1437 and 3 CA ADC § 1350(d)(1) also violate the Commerce  
16 Clause because they have the purpose and effect of regulating conduct in our  
17 states and wholly outside the State of California.

18 98. AB1437 and 3 CA ADC § 1350(d)(1) further violate the Commerce  
19 Clause because they impose a substantial burden on interstate commerce by  
20 forcing Plaintiffs' egg producers either to increase their production costs—  
21 raising the price of eggs not just in California but in our own states as well—  
22 or forgo the largest market in the United States and see the prices and profits  
23 plunge.

24 99. AB1437 and 3 CA ADC § 1350(d)(1) serve no legitimate state  
25 purpose because they do not protect the welfare of any animals within the  
26 State of California, and their stated purpose—to prevent salmonella  
27 contamination—is pretextual.

1           100. Plaintiffs therefore seek declaratory and injunctive relief under  
2 28 U.S.C. § 2201.

3  
4                               **COUNT II**  
5                               **(IN THE ALTERNATIVE)**  
6                               **FEDERAL PREEMPTION**

7           101. Plaintiffs incorporate all allegations in Paragraphs 1 through 100  
8 into Count II of this Complaint.

9           102. If this Court were to rule that AB1437 and 3 CA ADC §  
10 1350(d)(1) served a legitimate, non-discriminatory purpose to lower the risk  
11 of salmonella contamination by imposing new cage-size and flock-density  
12 standards for housing egg-laying hens, the statute and regulations would be  
13 in conflict with the express terms of 21 U.S.C. § 1052(b).

14           103. Moreover, because Congress evidenced its intention to occupy the  
15 entire field of regulations governing the quality and condition of eggs by  
16 imposing uniform national standards, the Federal Egg Products Inspection  
17 Act, 21 U.S.C. § 1032, implicitly preempts AB1437 and 3 CA ADC §  
18 1350(d)(1) as well.

19           104. Plaintiffs therefore seek declaratory and injunctive relief under  
20 28 U.S.C. § 2201 that AB1437 and 3 CA ADC § 1350(d)(1) are null and void  
21 under the Supremacy Clause of the United States Constitution.

22  
23           WHEREFORE, the States of Missouri, Nebraska, Alabama, and  
24 Oklahoma; the Commonwealth of Kentucky, and the Governor of Iowa  
25 respectfully request that this Court issue the following relief:

- 26                   A.     declare that AB1437 is invalid because it violates the  
27                               Commerce Clause of the United States Constitution or, in



- 1 the alternative, because it is expressly and implicitly  
2 preempted by the Federal Egg Products Inspection Act;  
3 B. declare that 3 CA ADC § 1350(d)(1) is invalid because it  
4 violates the Commerce Clause of the United States  
5 Constitution or, in the alternative, because it is expressly  
6 and implicitly preempted by the Federal Egg Products  
7 Inspection Act;  
8 C. permanently enjoin Defendant from enforcing the  
9 provisions of both AB1437 and 3 CA ADC § 1350(d)(1);  
10 D. award costs and fees; and  
11 E. grant such other relief as the Court deems just and proper.

12  
13 March 5, 2014

Respectfully submitted,

14  
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